17
9h

19 55

File No. S Kanara 10/55

Legal Department

F. BRANCH

Subject:— Suits - Kanara

Institution of a suit against Shri A.R. Hemmadi and Shri Mangeshrao Narayanrao Kaisare for recovering Rs. 550 as compensation for damage caused to the Public Works Department Roller by goods truck No. BYX 2287 owned by Shri Hemmadi

File No. S. Kanara 10/55

ROR 1353/130521

P.W.D.

9

H/1-23

Submitted for information

2. Pl see the S.E.'s letter [illegible], wherein he has requested Govt. to sanction the suit against one Shri Hemmadi for recovery of a claim of Rs.550/- as compensation for damages etc. to the S.R. Roller No. 4734. The case has been fully explained by the Ex. Engr. in his letter [illegible] dt. the 14-5-53, and in the S.E.'s letter [illegible] dt. the 14-11-53. The Asstt. Govt. Pleader, Hubli is of the opinion that it is a fit case for filing a suit claiming the damages. The papers may be refd. back to the Legal Deptt. for ~~granting the necessary sanction~~ taking steps for filing the suit if it is a fit case.

hes 23/11/53

30/11/53

MS.

Before work to L.D. office should check up whether all necessary papers are collected as required by PWD Law Officers' Rules.

1/12

5/12

Secy.

RBV

Resubmitted w.r.t. Secy's note above.

2. The papers forwarded by the S.E., Sc., seem to be quite sufficient for the purposes of Rule 108 of the Law Officers' Rules. The papers may be refd. back to the L.D. as proposed above.

* left below

hd 16/12/53

19/12

MS.

U.O.R. to the Legal Deptt. dt. the 19-12-53

21

L.D.
21 DEC 1953

1/1 —

THE SECRETARY TO GOVT. OF H.P.
LEGAL DEPARTMENT
File No. 31291
Subject 23/12/53

Legal Department.

This is a proposal to file a suit on behalf of the State of Bombay against Shri A.R. Hemmadi for recovering Rs.550/- with interest and costs as compensation for the damage caused to P.W.D. Roller by his goods truck No.BYX 2297.

2. On 30-8-49 at about 4 P.M. when the P.W.D. Roller No.4734 was standing in Mile 20/1 of Dharwar Haliyal Road, one goods truck No.BYK-2297 owned by Shri A.R. Hemmadi dashed against the Roller and caused the following damage to it:-

(1) one Gearing Rod has been bent.

(2) One tooth of the Gearing wheel is broken.

(3) Head above the front wheel has cracked at two places.

The owner of the truck Shri Hemmadi by his letter dated 14-11-49 agreed to pay reasonable compensation for the damage caused to the Roller when the Inspector inspected it and estimated the damage. On 21-11-49 the owner of the truck was informed to deposit Rs.500/- to cover up the repair charges. The Roller was got inspected again in August 1950 from the Assistant of Dapuri Workshop who estimated the repair charges at Rs.450/- plus incidental charges Rs.100/- in all Rs.550/-. On the exact amount being communicated Shri Hemmadi wrote back intimating that the original damage caused by the collision was negligible while the damage must have been aggravated by the further use of the damaged roller. So he requested to condone the recovery of damages as negligible. Hence this proposal to file a suit.

3. (a) It is not clear from the report if the place of the accident falls within the jurisdiction of Dharwar Court or Karwar Court. This should be made clear. The D.G.P. Karwar has also raised the same point.

(b) Secondly it is not clear whether at the

time...

time of the accident the truck was driven by a driver or by the owner himself. If it was driven by a driver, ~~[illegible]~~ information regarding his name and description and residence will be necessary as he must be also joined as co-defendant along with the owner.

(c) A copy of the Police Panchanama is not in the repord of the case. That panchanama will show the ~~exact~~ exact position of the vehicles and the damage caused to the Roller by the collision.

Information on the above points may be called for to enable this office to issue the necessary instructions to the Dist. Government Pleader for filing a suit.

1A'

19/3

Sol (ml) 17/3

U.O.R to P.W.D. No. 7253/E & dated 18/3/54 19/3

with papers of
file No RDR 1353/130561
P.W.D. /CR Bor

P. W. D.
File No. RDR1353
Serial No. 36835

CR Bor

Submitted w.r.to on dt. the 23-11-53.

2. The information regd by the DD may be obtained from the SE & EC may draft for filing suit.

19/3 18-3-54

31/3/54

31/3/54

Letter 29 5

No. R.OR 1353/36835 Q

P.W.D./
B.C. Bombay
1st April 1953

To

The S.E., C.C.

Subj: Damage to S.R. Roller No. 4734.

Ref. your letter No. C-1/1, dt. 14-4-53.

2. Pl. furnish the following information in the matter :-

(a) The court within whose jurisdiction the place of the accident falls.

(b) At the time of the accident if the lorry was driven by a driver or the owner himself. If driven by a driver, then his name, description and residence

(c) A copy of the Police Panchnama showing the exact position of the vehicle, and the damage caused

to the roller keyplate collision

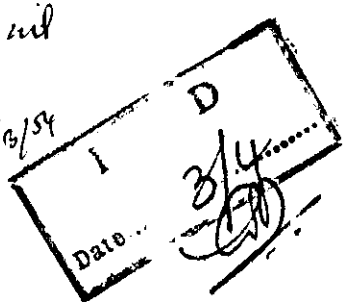
By Order etc.

AS

Asst Sec
5-6-54

Secretary
31/3

Ops. mil
has
31/3/54



L Gen
1/4

31 7

677—10,000—10-53 **Letter.** P. W. D. 607 e.

POST BOX NO.
TELEPHONE NO.

No. G-1/1 OF 1954.
OFFICE OF THE SUPERINTENDING ENGINEER,
Southern ..... CIRCLE:
Belgaum, dated ..... 10 FEB 1954

FROM

THE SUPERINTENDING ENGINEER,
Southern ..... CIRCLE;

To

The Chief Engineer,
Public Works Department,
Bombay No.1.

Subject.— Damage to S.R.Roller 4734 in Kanara Division. Complaint against Shri A.R.Hemmadi of Haliyal.

.....

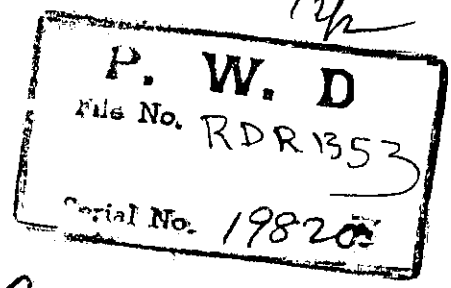
Reference: This office letter No.G-1/1, dated 4th November 1953.

2. Early orders in the matter are requested, lest the case be timebarred.

D.A.:- Nil.

10.2.954
Tech. Asstt.,
for Superintending Engineer, S.C.

PDG.10/2/54.


P. W. D
File No. RDR1353
Serial No. 19820

Below letter No.G-1/CB of 20th February 1954 from Executive Engineer, Kanara.

No.115 of 1954.
Karwar, dated 21st/22nd Feb. 1954.

R.W.Cs.

2. This is a case of damage of Rs.500/- caused to P.W.D. steam Roller by the dashing of BYX 2297 of Shri.Hemadi on 30-8-1949. Panchanama of that date shows the damage caused

3. There is letter of 14-11-1949 rrom the owner of this truck that he is prepared to pay any reasonable amount to cover the cost of repairs.

4. It appears that the owner would be liable not only for actual repairs but also for the loss caused to the Government for the actual number of days for which the steam Roller remained idle for getting it repaired.

5. It appears from letter dated 31-8-1950 of the S.D.O. Dapuri Workshop that the cost of repairs were estimated at Rs.450/-.

6. It appears that on 13-11-1950 the Dy.Engineer, called upon Shri.Hemadi to credit Rs.550/- but the owner has failed to do so.

7. Under article No.149 of the Indian Limitation Act the period of Limitation prescribed for suits by Government is 60 years. Hence the claim is still in time.

8. You should move the Government for sanction to file the suit by giving all particulars as required by Rule 6 of the Rules for the Conduct of Legal Affairs of Government. After obtaining sanction the suit will have to be filed in the Court of the Civil Judge, Senior Division Karwar, if the place of accident falls within the limits of Haliyal Taluka i.e. District of Kanara vide my letter No.243 of 11-4-1953.

9. All the papers have been returned herewith.

Sd/-
District Govt. Pleader, Kanara.

.....

No.G-1/CB.

Office of the
Executive Engineer, Kanara Dn.,
Karwar, 13-3-1954.

Copy forwarded, with compliments, to the Superintending Engineer, S.C., Belgaum for information, with reference to his endorsement No.G-1/1 of 10-2-1954.

2. As per para 7 of the District Government Pleader's letter, the claim is still in time.

Sd/- G.B.Agaskar,
Executive Engineer, Kan.Dn.

(P.T.O)

No.G-1.

Office of the
Superintending Engineer, S.C.
Belgaum: 25 MAR 1954

Copy forwarded with compliments to the Chief Engineer, Public Works Department, Bombay, for information in continuation of this office letter No.G-1/1, dated 10th February 1954.

2. Early orders on this office No.G-1/1 dated the 4th November 1953, are requested.

Superintending Engineer, S. C.

VBJ/25-3.

Q for 31-33
Submitted for information.
2. S.E.'s report on Q.d. dt. 1-4-54 may be awaited.

5/4/54

5/4/54

AS(C)

QBr

The S.E., S.C., expected on 26-5-54

26/5/54

26.5.54.

26/5

5.7.54

2/7/54

P. W. D.
Time No. RDR1353
Serial No. 41056

29/3

29/3 27-3-54

Letter.

No.G-1.

Office of the
Superintending Engineer,S.C.,
C.V Belgaum: 7th June 1954

From

The Superintending Engineer, Southern Circle.

To

The Chief Engineer & Joint Secretary to Government,
Public Works Department, Bombay No.1.

Subject:- Damage to S.R. Roller No. 4734.

.....

h 34

27/5(25/6/54)

Reference: Govt. (P.W.D.) expeditor No. RDR-1353-41056-Q dated the 25th May 1954.

2. The information called for from the Executive Engineer, Kanara Division is still awaited and he has been expedited in the matter. On its receipt, the Government reference will be disposed of.

D.A.:- Nil.

Tech. Asstt.,
for Superintending Engineer,S.C.

PDG.6/6/54.

QBr 135

Submitted for information.

Await.

HAS
30/6/54

Ans
30/11/54

Ans 30/6 135

Ans
2/11/54

15 (11)

P. W. D.
File No. RDR 1353
78036.

Ans
4/11/54

Q
11-6-54

~~RDR/1353/78036~~ 37

RDR 1353/9508

13

'Q' Br.

P.W.D.

The Superintending Engineer, S.C.,
expedited under No. RDR-1353 Q dt 9-8-54.

Bnm
6/8/54

9-8-54

Supdt.

10-9 S.C.
11-9.

ISSUED
Date 11.9.54

43

Letter.

No.G-1.

Office of the
Superintending Engineer, S.C.,
Belgaum: 25 AUG 1954

From

The Superintending Engineer, Southern Circle.

To

The Chief Engineer,
Public Works Department, Bombay No.1.

Subject:- Damage to S.R. Roller No. 4734.

.....

Reference: G.L.(P.W.D.) No. RDR-1353/36835-Q, dated 1-4-54 and expeditor No. RDR-1353-Q, dated the 9th August 1954.

2. The information called for in G.L. under reference is submitted herewith as detailed below :-

(a) The place of accident falls within the jurisdiction of the Civil Judge, Senior Division, Karwar as ascertained from the District Government Pleader, Kanara, Karwar.

(b) At the time of the accident, the truck was driven by the driver whose name is Shri Mangesh Narayanrao Kaisare and his residence is reported to be at Haliyal.

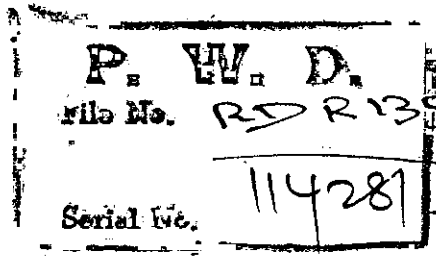
(c) A copy of the Police Panchanama showing the exact position of the vehicle and the damaged caused to the roller by the collision is also submitted herewith.

D.A.:- 1 Police Panchanama with its English translation

Superintending Engineer, S.C.

PDG.23/8/54.

28 Kee.b



26-8-54

RDR 1353/114 281

P. WD 'D' P

Resubmitted w. r/o this dept. U.O. dt. 21-12-53 P 27-28 ante

2 Pl see the U.O. dt. 18-3-54 from the L. dept. The information required by that dept in para 3 of its U.O. has now been obtained from the S.E., S.C. It has been reported that the accident occured at a place within the jurisdiction of the Civil Jud. Senior Dn, Kanwar. The SE SC has also reported the name & residence of the driver of the truck No BYX 2297 and has also forwarded a copy of the panchnama P 30-31 a/c as directed in U.O. No RDR 1253/36835-Q dt 1-4-54 P 29

3 The Legal dept may now be requested to take further action in the matter as at 'A' on P 28 ante

19/9/54

I believe this is a Q.B. case. Why U.O. dealt with by D Br

27315 22/9/54 E

DS

DS

PBr

Resubmitted w.r/o D. Secy's query.

2. The subject-matter is now dealt with in 'P' B. The mistake in marking it 'D' is regretted

3 Para (3) of the O.M. above is for orders

To P.B by Chn 13/9

Chn 13/9/54

As per para 3 above

Sd/- 21/9/1954

DS

DS

Issued vide No. 2019. U.O. to the Legal Deptt. dt. the 20-9-54

L.D.
11 MAR 1954

Std. Sectt. 23 c

Public Works DEPARTMENT

Unofficial Reference No. RDR 1353/130581 dated 21/12/1953

Subject—Damage to S.R. Roller No. 4734 in Kanara Divn. Complaint against Shri. A.R. Hemmadi of Halyal.

The attention of the Legal Department is requested to the unofficial reference from this Department noted in the margin, the early return of which with a reply will be convenient.

Secretary to Government
Superintendent

Unofficial reference to the L.D Department No. RDR 1353/130581-Q dated 11 March, 1954.

2004—5,00,000—9-52—K2*
G.R., G.D., No. 2408; dated 22-6-22.]

Std. Sectt. 78 e.

Correspondence

DOCKET SHEET

Suits: Kanara

~~Subject:~~

The State of Bombay
Vs
Shri A.R. Hemmadi

File No. 31291

Legal DEPT.

E BRANCH.

References :—

Date	To whom sent.	Notes and instructions.
23/12/53	Shri. Parwate	This is an institution of Suit & may await next dist[illegible] in. 24/12 Sd/- M.S. 26/12
		papers referred to P.W.D for supplying information as shown in para (a)(c)(e) to R to P.W.D No 7253/2 dated 18/3/54 with papers of file WRDR 1353/130551
		Keep in await the papers Cambo

Legal Department.

This is a proposal to file a suit on behalf of the State of Bombay against Shri A.R. Hemmadi for recovering Rs.550/- with interest and costs as compensation for the damage caused to P.W.D.Roller by ~~dashing~~ his goods truck No.BYX 2297.

2. On 30-8-49 at about 4 P.M. when the P.W.D. Roller No.4734 was standing in Mile 20/1 of Dharwar Haliyal Road, one goods truck No.BYX-2297 owned by Shri A.R. Hemmadi dashed against the Roller and caused the following damage to it:-

(1) one Gearing Rod has been bent.

(2) One tooth of the Gearing wheel is broken.

(3) Head above the front wheel has cracked at two places.

The owner of the truck Shri Hemmadi by his letter dated 14-11-49 agreed to pay reasonable compensation for the damage caused to the Roller when the Inspector inspected it and ~~an~~ estimate ~~was made thereof~~. On 21-11-49 the owner of the truck was informed to deposit Rs.500/- to cover up the repair charges. The Roller was got inspected again in August 1950 from the Assistant of Dapuri Workshop who estimated the repai charges at Rs.450/- plus incidental charges Rs.100/ in all Rs.550/-. On the exact amount being communicated ~~informed~~ Shri Hemmadi wrote back intimating that the original damage caused by the collision was negligible while the damage must have been aggravated by the further use of the damaged roller. So he requested to condone the recovery of damages as negligible. Hence this proposal to file a suit.

3. (a) It is not clear from the report if the place of the accident falls within the jurisdiction of the Dhwarwar Court or Karwar Court. The D.G.P. Karwar has also raised the same ~~difficulty~~ point.

(b) Secondly it is not clear whether at the time of the accident the truck was driven by a driver or by the owner himself. If it was driven by a driver, information

regarding....

regarding his name and description and residence will be necessary as he must be also joined as co-defendant along with the owner.

(c) A copy of the Panchanama is not in the record of the case. Panchanama will show the exact ~~picture of~~ the damage caused to the Roller by collision.

~~The~~ information on the above points may be called for ~~before instructions are issued to~~ the Dist. Government Pleader for filing a suit.

27-15
9-54

53

RDR 1353 | 156487

P. Lwd

P'

Pt Submitted 1st-3rd for information.

*RDR1353/114287.

2. The main hpsit on the subject with are under u.o.r to the Legal Dept. since 20.9.54. These hps may be referred u.o to that dept by way of a reminder.

THE SECRETARY TO GOVERNMENT,
LEGAL DEPARTMENT.
File No. 36533
Sub No. 17/12/54
Branch

L.D.
1 DEC 1954

8/12/54

A. Treatment Urgent

10/12/54

Note to the Legal Dept. 9-15-12-54

Dr
11/12/54

L.D.

This is a proposal to file a suit on behalf of the State of Bombay against Shri A.R. Hemmadi and Shri Mangeshrao Narayanrao Naisare for recovering Rs. 550/- as compensation for the damage caused to the P.W.D. Roller by his goods truck No.BYX-2287 owned by Shri Hemmadi.

2. The institution of a suit may be sanctioned on the lines of the accompanying Memorandum of Instructions.

xp 53-61

3. It may, however, be mentioned here that the damage as a result of the collision to the Roller was caused on 30th Aug- 1949 while inspection of the damage done to the Roller was made in Aug.1950 and the damage estimated then which was exactly a year after. In the meanwhile the Roller was used for resurfacing work. In view of long time that elapsed between the collision and the inspection of the damage done to the Roller and the use of Roller before inspection, Govt. case is likely to suffer and its success depends upto what extent facts of the case pertaining to the damage to the Roller by the collision are proved.

27/4

Sol (M.L) 27.4

× 8801/E dt: 28/4/55

S. 30/4

× Secy P.W.D. 28/4/55

28/4

S. Bo 28/4

P. W. D. File No RDR1353 Serial No. 57380

L.D. 3 - MAY 1955 E

Fit get this drawn dt 28/4

n. or to L.D dt 3-5-55

MEMORANDUM OF INSTRUCTIONS.

This is a proposal to file a suit on behalf of the State of Bombay against Shri A.R. Hemmadi and Shri Mangeshrao Narayarao Kaisare for recovering Rs. 550/- with interest and costs as compensation for the damage caused to P.W.D. Roller by goods truck No. BYX-2297 owned by Shri Hemmadi.

2. On 30th August 1949 the P.W.D. Roller No. 4734 was standing facing Dharwar [redacted] in Mile 20/1 of Dharwar Haliyal Road. This place falls in the Karwar district. The Road at that place is about 22' broad. When the Truck was so standing one goods truck No. BYX-2297 woned by Shri A.R. Hemmadi was proceeding from Dharwar to Halyal. While so proceeding it dashed against the Roller. This happened at about 4 P.M. The Truck was then being driven by Shri Mangeshrao Narayanrao Kaisar The driver was so negligent and rash in driving that in spite of the breaks being applied by him to the truck and in spite of the road being sufficiently wide to pass by, the truck dashed against the Roller and the impact of the truck on the Roller was so great that the truck toppled down and caused damage to the Roller. Then the P.W.D. Mustering Karkun and the Roller driver Shri Solu Philip were present on the scene. Immediately after the collision a panchnama was drawn at about 6 P.M. when the following damage was noticed.

(i) one Gearing Rod was bent;

(ii) one tooth of the Gearing wheel was broken;

(iii) head above the front wheel was cracked at two places.

This panchnama was drawn by Shri Soiru Bhaskar Rane and (ii) Shri Vishwanath Datta Naik both of who are from Halyal.

The owner of the truck Shri Hemmadi by his letter dated 14-11-49 agreed to pay reasonable compensation for the damage caused to the Roller when the Inspector inspected it and estimated the damage. On 21-11-49 the owner of the truck was informed to deposit Rs. 500/- to cover up the repair charges. The Roller was got inspected in August 1950 from the Assistant of Dapuri Workshop who estimated the repair charges at Rs. 450/- plus incidental charges Rs. 100/- in all Rs.550/- On the exact amount being communicated Shri Hemmadi wrote back intimating that the original damage caused by the collision was negligible while the damage must have been aggravated by the further use of the damaged roller. So he requested to condone the recovery of damages as negligible. Hence this proposal to file a suit.

3. The suit should be instituted in the Court of the Civil Judge, Senior Division, Karwar in which the State of Bombay should be the plaintiff and Shri A.R. Hemmadi and Shri Mangesh Narayanrao Kaisare should be defendants. The suit claim should be for Rs. 550/-. The cause of action arises on 30th August 1949 when the collision took place. The reliefs to be prayed for should be the suit calim of Rs. 550/- and future interest and costs.

4. By his letter dt/ 14th Novr. 1949 Shri A.R. Hemmadi has agreed to pay reasonable compensation for the damage caused to the Roller when the Inspector inspected it and estimated the damage. The Asstt. of Dapuri Workshop inspected the Roller and estimated the cost of repairs at Rs. 450/-. For arranging inspection additional incidental charges of Rs. 100/- had been incurred.

MEMORANDUM OF INSTRUCTIONS.

This is a proposal to file a suit on behalf of the State of Bombay against Shri A.R. Hemmadi and Shri Mangeshrao Narayarao Kaisare for recovering Rs. 550/- with interest and costs as compensation for the damage caused to P.W.D. Roller by goods truck No. BYX-2297 owned by Shri Hemmadi.

x ꝑ 41 r ꝑ 19

2. On 30th August 1949 the P.W.D. Roller No. 4734 was standing facing Dharwar [redacted] in Mile 20/1 of Dharwar Haliyal Road. This place falls in the Karwar district. The Road at that place is about 22' broad. When the Truck was so standing one goods truck No. BYX-2297 woned by Shri A.R. Hemmadi was proceeding from Dharwar to Halyal. While so proceeding it dashed against the Roller. This happened at about 4 P.M. The Truck was then being driven by Shri Mangeshrao Narayanrao Kaisare. The driver was so negligent and rash in driving that in spite of the breaks being applied by him to the truck and in spite of the road being sufficiently wide to pass by, the truck dashed against the Roller and the impact of the truck on the Roller was so great that the truck toppled down and caused damage to the Roller. Then the P.W.D. Mustering Karkun and the Roller driver Shri Solu Philip were present on the scene. Immediately after the collision a panchnama was drawn at about 6 P.M. when the following damage was noticed.

ꝑ 43

(i) one Gearing Rod was bent;

(ii) one tooth of the Gearing wheel was broken;

(iii) head above the front wheel was cracked at two places.

This panchnama was drawn by Shri Soiru Bhaskar Rane and (ii) Shri Vishwanath Datta Naik both of who are from Halyal.

-nus Rs. 550/- is the reasonable compensation for the damage caused to the Roller and according to his agreement Shri Hemmadi was bound to pay this amount. As he has not paid the amount the plff is ~~bound~~ obliged to file a suit to recover it.

5. The defendant Shri Hemmadi is likely to urge in defence that the inspection of the Roller was made in Aug. 1950 while the collision took place on 30th Aug. 1949 i.e. after about a year and that before inspection the Roller was used by the P.W.D. for Road works and therefore the damage noticed at the time of inspection might have been the damage which was aggrevated by such use. It is true that before inspection the Roller was used but it was used only at Supa for resurfacing work and that by such use the force carriage was cracked completely. But due to the collision there were already cracks on the force carriage of the Roller and the estimate of Rs. 450/- for repairs includes estimate for repairs to the cracks and not for replacement of the force carriage which was completely cracked. It may therefore, be urged that as the estimate of Rs. 450/- includes only cost of repairs to the cracks on force carriage of the Roller and not for the replacement of the force carriage which was completely cracked, the contention of Shri Hemmad that estimate of damages is exaggerated is not correct.

6. The Dist. Govt. Pleader is requested to produce the panchanama of the collision in original in the Court. He is also requested to obtain information regarding the defendants' description and their residences from the Ex. Engineer, Kanara Division. He should also send the necessary oral and documentary evidence in the case.

No. 9341/E 63

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1) 5th May, 1955.

Sub: Institution of a suit against Shri Hemmadi and Shri Mangeshrao Narayanrao Kaisare for recovering Rs. 550/- etc.

...

Memorandum.

With reference to the subject noted above, the District Government Pleader, Kanara, is informed that institution of a suit against Shri Hemmadi and Shri Mangeshrao Kaisare for recovering Rs. 550/- on account of damages done to the P. W. D. Roller, is sanctioned and he is requested to take the necessary steps in accordance with the accompanying Memorandum of Instructions, a copy of which is sent herewith in advance. He should send the draft plaint for approval.

Papers of the case received from The Executive Engineer, Kanara Division, Kanara, accompany.

oc

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara.

CDS/4/5

GR sent to Pune
cheque no. 23289/C dt 3/12/93

LETTER.

To

The Executive Engineer, Kanara n., Karwar.

Subject:- Damage to S.R.roller No.BYX-4734
Accident in mile 20/1 on Dharwar Halival Road, on 30-8-1949.

Reference: No.G-1/CB dated 14-10-1954, from the Executive Engineer, K.D.Kanara.

No.59-F of 1954. Karwar, 1st Novr. 1954.

The result of the police investigation in the matte cannot be intimated now, as the papers pertaining to the motor accident for the year 1949 have since been destroyed.

Sd/-

District Supdt. of Police, Kanara.

.....

No.G-1/CB. Executive Engineer's Office,
Karwar, 11-11-1954.

Copy f.w.cs., to the Superintending Engineer, S.C., Belgaum, for information, with reference to his endt. No.G-1 of 25-8-1954..

Sd/- x x x

Executive Engineer, Kan. Dn.,

" True copy"

Clerk to
Supdg.Engr.S.C.,

67

Below Executive Engineer, Kanara Dn's No.G-1/CB, of 11th November 1954, endorsed to this office regarding Damage to S.R. roller No.4734.

.....

9

No.G-1. Office of the Superintending Engineer,
Southern Circle,
C.V.Belgaum: 17th November 1954.

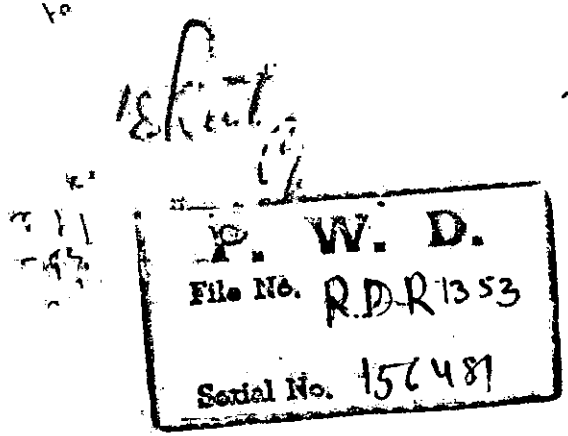
Copy forwarded, with compliments to the Chief Engineer, Public Works Department, Bombay for information in continuation of this office No.G-1 dated 25th August 1954.

2. Early orders on para 3 of this office No.G-1/1 of 4th November 1953, are requested.

VBJ/17-11-54.

17/11

Superintending Engineer, S.C.,
17/11.


P. W. D.
File No. R.D.R 1353
Serial No. 15(481

69

From:

The District Government Pleader, Kanara,
Camp: Honavar.

To

The Executive Engineer,
Kanara Division, Karwar.

No. 413 of 1955. Honavar, dated 9-5-1955.

Sir,

I have received from the R.L.A. his letter No.9341 dated 5th instant asking me to file a suit against Shri Hemmadi and Shri Mangeshrao Narayan Kaisare for recovering Rs.550/-. In this connection I request you to attend to the following points:

THE SECRETARY TO GOVERNMENT, LEGAL DEPARTMENT, No. 13454 E 13555

1. Please supply full name of Shri Hemmadi and the present address of both Hemmadi and Kaisare, of Chitakula alias Ankola.
2. Along with the R.L.A's letter I have received only the typed copies of the original letters which have to be relied upon in the suit. As I require the originals I request you to forward all the original documents referred to by you in your report submitted under Rule 108.
3. Your claim appears to be restricted to Rs.550/-, of which Rs.450/- were the estimated cost of repairs, and Rs.100/- as incidental charges. Please let me know as to whether the Roller remained idle after the accident and if so for how many days. Do you wish to claim any compensation on this account. If so, at what rate?

Yours faithfully,

Dist.Govt.Pl.Kanara.

L.D. 13 MAY 1955 E.

No.414 of 1955.
Honavar, dated 9-5-1955.

Copy submitted to the R.L.A.Bombay for information.

Dist.Govt.Pl.Kanara, camp:Honavar

L D

Submitted for information

13/5 Sd (illegible) 13-5

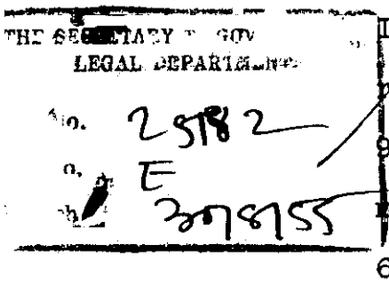
No. 755 of 1955.
Karwar, 20th August 1955.

From

The District Government Pleader,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.



Sir,

With reference to your letter No.9341E, dated 5-5-1955 I have the honour to inform you that immediately after the receipt of the above letter I addressed my letter No.413, dated 9-5-1955 to the Executive Engineer, Kanara, Karwar to supply me with the necessary information. A reminder was issued on 6-6-1955. The reply came only yesterday under letter No. G-1/cB, dated 18-8-1955. Immediately I have drafted the plain and sent the draft for your approval.

The first difficulty which arises in the case is that the original panchanama of the accident which was with the Police Department is said to have been destroyed and is not available. In these days where it is very common forthe witnesses to turn hostile it is difficult to expect the witnesses to admit the contents of the copy of the panchanama which is in the papers received by me. It has ~~xxx~~ been ~~xxxx~~ signed as true copy by some Police officer. Therefore if the panchas turn hostile it will be uphill task to prove the actual damage to the Roller. Secondly the ~~bus~~ Roller was actually inspected by S.D.O.Dapuri a year later. The Executive Engineer informs me in the above quoted letter that there is no record of time taken for temporary repairs. But on enquiry it was learnt that it ~~w~~ took 3 or 4 days to repair it after the accident after which the roller was used for some days by the Dept. Long after that it was inspected. Im my opinion the Govt can claim actual damage caused to the Roller on the date of the accident. Therefore the extent of damage ascertained a year later cannot form any basis in view of the Deft's contion that it might have been damaged later as it was used without proper repairs. Please enlighten me what changes are necessary in the draft plaint in the light of the above observations and as to whether I should file the suit.

In case I should file the suit you may please sanction payment of Rs.75/- to cover the Court fees and other costs for filing the suit and draw the same as an advance.

Yours faithfully,

Dist.Govt.Pleader,Karwar.

L.D.

Submitted

The Dist: Govt Pleader has forwarded a draft plaint for approval.

The Dist: Govt Pleader appears to be doubtful whether the claim of the Govt would be sustainable. (vide para of 'A' and 'B' of his letter.)

Please see office note dt: 27th April 1955 at p. 55 ante: In that note also the difficulty of proving the Govt claim was shown.

For orders.

22/10

Sol (M.L) We shall ask the D.G.P.T. to return the draft plaint. A examine the draft plaint. D.G.P.T may be requested to prefer an advance bill for Rs 75 separately.

11/10

In the Court of the Civil Judge,

Senior Division,Karwar.

O.S. No. of 1955.

State of Bombay ... Plff.

Vs.

1) Annaji Ramrao Hemmadi, aged 38,
c/o Durga Rice Mill, Haliyal.

2) Mangesh Narayan Kaisare,aged 44;
Brahmin Galli, Haliyal 111 Defts.

Claim - Rs.550/-.

Deft 1 is the owner of Goods Truck BYX 2297. Deft 2 was the driver who was engaged by Deft 1 to run this truck.

2. On 30th August 1949 P.W.D.Roller No.47340 was standing facing towards Dharwar in Mile No.20/1 of Dharwar-Haliyal Road. This place falls in the Kanara District. The road at that place is about 22 feet broad. When the [truck] P.W.D. Roller was so standing the Deft's truck No.BYX 2297 was proceeding from Dharwar to Haliyal. While so proceeding, it dashed against the P.W.D.Roller. This happened at about 4 p.m. The truck was then driven by Deft 2 in due course of his employment. Deft no.2 was so negligent and rash in driving the truck that inspite of the ~~breaks~~ brakes being applied by him to the truck and inspite of the road being sufficiently wide to pass by, the truck dashed against the Roller. The impact of the truck on the roller was so great that the truck toppled down and damage was caused to the Roller.

3. A Panchanama was drawn up regarding the said accident in the presence of Deft 2. It mentions that due to this accident there was a cut to the wheel of the Roller. The front wheel of the Roller is bent on the left side. There was a black fresh cut on the left side of the front wheel and also black cuts to the mudguard to the right side 4" from the left. So also a fresh black cut was seen on the left side of the fork 2" to the right. There was a fresh 3" black cut to the hand of the ~~of~~ fork on the left side in the front and from there a 3" cut to the left at the back and another 3" cut on the down side of the slipper from the right and from there

These details are given as the original Panchanama is missing, so that Defts may have the opportunity to know the details of the damage mentioned by the Plff.

a scratch mark 2" long. Out of 12 ~~feet~~ teeth one tooth of the steering rod had been broken and had fallen down. The mark was quite fresh. The steering rod was bent on the upper side. The accident occured from a place about 194" on the Dharwar side from the place where red flag had been fixed. This distance was sufficient to warn the driver of the [Roller.] (truck) At a distance of 147 feet from this flag post there was a fresh mark of only one wheel of the truck showing that the truck had toppled down to the right side. From the place where the truck toppled down only one ~~xxxx~~ mark ~~xxx~~ of one wheel to a length of 23' could be seen. But prior to that there were two wheel marks upto the place of accident. From the place of accident it appears that the truck toppled within ~~2~~ 45 feet. The truck was not then at the place of the accident.

X & not pending rod as it was bent in the opposite

4. Subsequently it transpired after examination by mechanics that the head above the front wheel was cracked at 2 places. ~~xxxx~~ Temporary reforcing were got done immediately

5. Immediately the Deft 1 was informed of the accident, by a registered letter dated 7-11-1949. He replied on 14-11-1949 that he was prepared to pay any reasonable amount to cover the costs of repairs to the P.W.D.Roller on the same being inspected by the Inspector and an estimate made thereof On 21-11-1949 he was called upon to deposit amount of Rs.500/- and was informed that the Roller was going to be got inspected and repaired by the Govt.

6. Before ~~the~~ Deft 1 addressed ~~his~~ this letter dated 14-11-1949, his manager Shri Bhandagi acknowledged the registered notice issued to Deft 1 and ~~xx~~ informed the Executive Engineer that the accident would be reported to the ~~Mxxxx~~ Motor Owners Mutual Insurance Co.Ltd.Belgaum. Again on 25-11-1949 he informed the Executive Engineer that a claim had been submitted to the Insurance Co. and therefore time should be granted to pay the amount of Rs.500/-.

Now question is whether the Insurance Co should be treated as party.

7. The Roller was got inspected from the Assistant of Dapuri Workshop who estimated the repair charges at Rs.450/-

plus incidental charges of Rs.100/-. When this fact was intimated to the Deft 1 he protested by saying that the original damage was negligible and that the Roller must have been used by the Dept for the road works after the accident and further damage must have been caused during the said work. He further requested that the damage caused by the accident may be waived and that he may be exempted from the payment of the same.

8. Every bus or truck has to be insured for third party risk. Whenever there is such an accident it is the Insurance Company who has to make good the loss. It is for the owner of the truck to properly place his case and recover the loss caused either to his truck or to the Roller from the Insurance company. It appears that the Deft 1 had submitted such a claim to the Insurance company and must have recovered the damages. Whether he has done it or not he is liable to pay the damages caused to the Govt due to the accident.

9. The Deft 1 has not denied his liability to pay the damages. His grievance is only that the damages were negligible. Therefore it is clear that though the accident was caused by Deft 2 when he was driving the truck in due course of his employment Deft 1 has accepted the liability. He is therefore estopped from denying his liability.

10. The Deft 1's objections appear to be that the estimate of the Assistant of Dapuri Work had been obtained late, but the panchanama drawn up on the spot clearly goes to show the extent of the damage to the front wheel of the Roller, to the mud guard, the fork and the steering rod. The steering rod was actually bent on the upper side. The amount fixed by the S.D.O.Dapuri workshop was [a] concessional amount. The cost of a new [carriage] would have been Rs.1400/-. The amount claimed from the Deft is quite reasonable.

11. On 30th April 1952 another letter was addressed calling upon Deft 1 to credit the amount. He then applied for a certified copy of the panchanama to the Executive Engineer on 5-5-1952. ~~A copy of the panchanama was accordingly~~

~~supplied. Yet he refused to pay the amount.~~ The original panchanama was with the Police Department. So Deft ~~xx~~ no.1 was asked to obtain the certified copy directly from the D.S.P. As the Deft refused to pay the amount this suit has been filed.

12. Cause of action for this suit arose ~~xx~~ within the jurisdiction of this Court at Haliyal.

13. The Deft 1 had himself suggested that the necessary repairs to the Roller should be got ascertained after getting it inspected by an Inspector and an estimate thereof should be made. Accordingly the estimate had been got made. The delay was due to ~~xxxxxxxxxxxxxx~~ the time taken for correspondence and for arranging the inspection.

14. Soon after the accident the urgent repairs were attended to and thereafter it was used for P.W.D. work. As no compensation has been claimed for the period of the Roller remaining idle the question as to how long and for what period the Roller was subsequently kept idle does not arise. The Defts are bound to reimburse the actual damage caused to the Roller on account of the accident. The use of the Roller after the accident does not absolve the Defts from paying the compensation for the actual damage caused.

15. This Court has jurisdiction to try this suit as the accident took place within the jurisdiction of this Court.

16. Plff therefore prays that a decree may be passed against the Defts for Rs.550/- and costs with future interest as compensation for the damage caused to the P.W.D.Roller due to the rash and negligent driving by Deft 2 of Deft 1's truck BYX 2297 on 30-8-1949.

Legal Deptt.

Re-submitted with reference Sol. (M.L.) directions at-p. 72 ante.

2 The Dist. Govt. Pleader has raised the question, whether the Insurance Co. can be made a party in view of the fact that according to the Motor Vehicles Act every vehicle has to insure against Third party risk and the owner of the vehicle in this case Shri Hemmadi has insured his vehicle accordingly.

3. As damage has been done to the P.W.D Roller provisions regarding insurance against the third party risk are not applicable and therefore the Insurance Co. cannot be made a party to the suit. The Dist. Govt. Pleader may be informed accordingly.

4 The draft has slightly been amended and is for approval.

Sd/-

2/11 Sol (M.L) I do not see whether the Dy. C has touched the question of joining Insurance Co as party. Draft plaint with proposed amendments is appended. Kindly 7-11

No. 25212/E

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 10/12 November 1955.

Subject:- Institution of a suit against
Shri Hemmadi and Shri Kaisare.

Memorandum:

With reference to his letter No.755 dated the 20th/22nd August 1955 forwarding a draft plaint in the above matter for approval, the District Government Pleader, Kanara, is informed that the draft is approved subject to the following modifications:

(1) In line 4 of para.2 of the draft for the word 'truck' substitute the words 'P.W.D. Roller'.

(2) In line 18 of para.3 of the draft for the word 'Roller' substitute the word 'truck'.

(3) For the existing para.10 in the draft, substitute the following paragraph:

"10. The defendant No.1's objections appear to be that the estimate of the Assistant of Dapuri Work had been obtained late, but the panchnama drawn up on the spot clearly goes to show the extent of the damage to the front wheel of the Roller, to the mud guard, the fork and the steering rod. The steering rod was actually bent on the upper side. The amount of Rs.550/- fixed by the S.D.O. Dapuri workshop was based on the damage done to the above parts of the Roller and is also concessional. The cost of a new Roller would have been Rs.1400/-. The amount claimed from the defendants is quite reasonable."

2. As regards the question whether the Insurance mpany can be made a party in the proposed suit, the strict Government Pleader is informed that as damage is done to the P.W.D. Roller, the Insurance Co. cannot be made a party to the suit. In this connection his attention is invited to section 95 of the Motor Vehicles Act,1939.

3. With regard to the request for sanction of

p.t.o..

Rs.75/- the District Government Pleader is requested to prefer an advance bill for the amount separately.

oc

for Remembrancer of Legal Affairs.

To

The District Government Pleader,

Kanara, Karwar.

Submitted for approval & signature.

9/11

MAP/-

9/11.

Suits :

Kanara.

For recovering Rs. 550 as compensation for the damage caused to the Public Works Department Roller by goods truck No. BYX-2287, owned by Shri Hemmadi.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 27289/E.

Sachivalaya, Bombay, 7th December, 1955.

Endorsement from the Public Works Department—Forwarding papers and requesting sanction to the Institution of a suit against Shri A. R. Hemmadi and Shri Mangeshrao Narayanrao Kaisare for recovering Rs. 550 as compensation for damage caused to the Public Works Department Roller.

Memorandum to the District Government Pleader, Kanara, No. 9341/E, dated the 5th May 1955—Forwarding a copy of the Memorandum of Instructions in advance.

RESOLUTION.—Sanction is accorded to the Institution of a suit against Shri A. R. Henmadi and Shri Mangeshrao Narayanrao Kaisare for recovering Rs. 550 as compensation for damage caused to the Public Works Department Roller by goods truck No. BYX 2287 owned by Shri Hemmadi.

By order and in the name of the Governor of Bombay,

Original for

J. R. DHURANDHAR,
Secretary to Government.

Leg. 851 H—Y

[P.T.O.

To

*The Public Works Department,
*The Superintending Engineer, Southern Circle, Belgaum,
*The Executive Engineer, Kanara Division, Karwar,
The District Government Pleader, Kanara, Karwar (with two copies of Memorandum of Instructions.).

*With a copy of Memorandum of Instructions.

NO. of 1955.

Copy forwarded for information and guidance to

Submitted
25 file in S Kanara 155 (New)
16/X
12/10

Memorandum of Instructions.

This is a proposal to file a suit on behalf of the State of Bombay against Shri A. R. Hemmadi and Shri Mangeshrao Narayanrao Kaisare for recovering Rs. 550 with interest and costs as compensation for the damage caused to Public Works Department Roller by goods truck No. BYX-2297 owned by Shri Hemmadi.

2. On 30th August 1949, the Public Works Department Roller No. 47340 was standing facing Dharwar in Mile 20/1 of Dharwar Haliyal Road. This place falls in the Karwar district. The Road at that place is about 22′ broad. When the Truck was so standing one goods truck No. BYX-2297 owned by Shri A. R. Hemmadi was proceeding from Dharwar to Halyal. While so proceeding it dashed against the Roller. This happened at about 4 p.m. The Truck was then being driven by Shri Mangeshrao Narayanrao Kaisare. The driver was so negligent and rash in driving that in spite of the breaks being applied by him to the truck and in spite of the road being sufficiently wide to pass by, the truck dashed against the Roller and the impact of the truck on the Roller was so great that the truck toppled down and caused damage to the Roller. Then the Public Works Department Mustering Karkun and the Roller driver Shri Solu Philip were present on the scene. Immediately after the collision a *panchnama* was drawn about 6 p.m. when the following damage was noticed :—

(i) one Gearing Rod was bent;

(ii) one tooth of the Gearing wheel was broken;

(iii) head above the front wheel was cracked at two places.

This *panchnama* was drawn by Shri Soiru Bhaskar Rane and (ii) Shri Vishwanath Datta Naik both of whom are from Halyal.

The owner of the truck Shri Hemmadi by his letter, dated 14th November 1949 agreed to pay reasonable compensation for the damage caused to the Roller when the Inspector inspected it and estimated the damage. On 21st November 1949 the owner of the truck was informed to deposit Rs. 500 to cover up the repair charges. The Roller was got inspected in August 1950 from the Assistant of Dapuri Workshop who estimated the repair charges at Rs. 450 plus incidental charges Rs. 100 in all Rs. 550. On the exact amount being communicated Shri Hemmadi wrote back intimating that the original damage caused by the collision was negligible while the damage must have been aggravated by the further use of the damaged roller. So he requested to condone the recovery of damages as negligible. Hence this proposal to file a suit.

3. The suit should be instituted in the Court of the Civil Judge, Senior Division, Karwar in which the State of Bombay should be plaintiff and Shri A. R. Hemmadi and Shri Mangesh Narayanrao Kaisare should be defendants. The suit claim should be for Rs. 550. The cause of action arises on 30th August 1949 when the collision took place. The reliefs to be prayed for should be the suit claim of Rs. 550 and future interest and costs.

4. By his letter dated 14th November 1949 Shri A. R. Hemmadi has agreed to pay reasonable compensation for the damage caused to the Roller when the Inspector inspected it and estimated the damage. The Assistant of Dapuri Workshop inspected the Roller and estimated the cost of repairs at Rs. 450. For arranging inspection additional incidental charges of Rs. 100 had been incurred. Thus Rs. 550 is the reasonable compensation for the damage caused to the Roller and according to his agreement Shri Hemmadi was bound to pay this amount. As he has not paid the amount the plaintiff is obliged to file a suit to recover it.

5. The defendant Shri Hemmadi is likely to urge in defence that the inspection of the Roller was made in August 1950 while the collision took place on 30th August 1949 i.e., after about a year and that before inspection the Roller was used by the Public Works Department for Road Works and therefore the damage noticed at the time of inspection might have been the damage which was aggravated by such use. It is true that before inspection the Roller was used but it was used only at Supa for resurfacing work and by such use the force carriage was cracked completely. But due to the collision there were already cracks on the force carriage of the Roller and the estimate of Rs. 450 for repairs includes estimate for repairs to the cracks and not for replacement of the force carriage which was completely cracked. It may, therefore, be urged that as the estimate of Rs. 450 includes only repairs to the cracks on force carriage of the Roller and not for the replacement of the force carriage which was completely cracked, the contention of Shri Hemmadi that estimate of damages is exaggerated is not correct.

6. The District Government Pleader is requested to produce the *panchnama* of the collision in original in the Court. He is also requested to obtain information regarding the defendants' description and their residences from the Executive Engineer, Kanara Division. He should also send the necessary oral and documentary evidence in the case.

S. Kanara 10/55

New

18-1-56